

**COMMENTS ON PROPOSED REVISIONS TO LSC REGULATIONS
PART 1602 -- FREEDOM OF INFORMATION ACT PROCEDURES
SUBMITTED BY
THE CENTER FOR LAW & SOCIAL POLICY
ON BEHALF OF
THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION**

December 23, 2002

On November 18, 2002, the Legal Services Corporation (LSC) published in the *Federal Register* (67 FR 69498) a Notice of Proposed Rulemaking (NPRM) for revisions to Part 1602 -- Freedom of Information Act (FOIA) Procedure -- of the LSC regulations. Comments are due to LSC on January 2, 2003. These comments are submitted to LSC by the Center for Law and Social Policy (CLASP) on behalf of the National Legal Aid and Defender Association (NLADA). NLADA is a membership organization that represents civil legal services programs, including those funded by LSC. CLASP serves as counsel to NLADA.

NLADA submits these comments in order to ensure that LSC's FOIA regulations meet the following goals: (1) the legal services community and the low income community that it serves are able to have access to information about LSC and its activities; (2) members of the legal services community and the low-income community that it serves are able to secure fee-waivers when they request documents from LSC under FOIA; and (3) LSC has the ability to protect confidential or privileged information regarding LSC recipients, its clients and employees.

Protection of Confidential Information: NLADA supports the LSC proposal to incorporate into the rule a provision that protects the rights of those who have submitted grant applications to LSC. Under the proposed provision when LSC receives a FOIA request seeking the release of a submitter's grant application or parts of such an application, LSC would notify the submitter of the request and provide an opportunity for the submitter to object to the disclosure of information contained in the grant application.

We would also urge LSC to consider applying this policy to other information (e.g. client financial information) that arguably would be covered by Exemption 3 of §1602.9 (Exemption for trade secrets). In addition, we urge LSC to extend the coverage of the provision giving recipients the opportunity to request withholding of records to information that is arguably protected under any of the FOIA exemptions, especially those that implicate personal privacy concerns of recipient clients and staff, including Exemption 5 of §1602.9 which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" and Exemption 6 of §1602.9 which protects "records or information compiled for law enforcement purposes, but only to the extent that the production of such law

enforcement records or information...could reasonably be expected to constitute an unwarranted invasion of personal privacy." By permitting recipients to object to the release of such information, LSC would be turning to the entity that is in a much better position than LSC to determine whether personal privacy concerns would be affected by the release of the information.

Processing of New Requests Pending Payment of Overdue Fees:

NLADA does not object to providing LSC with the authority to stop the processing of new requests from requesters who have not paid overdue fees that are more than 30 days late. However, we urge LSC not to consider fees that are the subject of a pending appeal or a lawsuit as "overdue." Requiring requesters to pay fees that are the subject of an appeal before LSC processes other FOIA requests would force them to pay the fees while their appeals of the charges are still pending, depriving them of their rights under FOIA.

Fee Waivers: The third revision provides additional guidance regarding the circumstances under which fees to process FOIA requests may be waived by LSC. We believe that fees should be waived for most requests from the legal services community and the low-income community that it serves and support the clarifications to the extent that they will make it more likely that fee waivers will be granted for those requests.

Fees: Finally, the NPRM proposes to raise the fees for search and review time to reflect the current LSC pay schedule and to raise the fee for photocopying to reflect LSC's actual cost. We do not oppose these proposals as long as LSC interprets the fee waiver provisions so that fees are generally waived for FOIA requests from the LSC recipient and client community.

Thank you for providing the opportunity for NLADA to comment on these proposed revisions. If you have any questions regarding these comments, please feel free to contact NLADA's Counsel, Linda Perle at CLASP, 1015 15th St., NW, Suite 400, Washington, DC 20005, 202-906-8002or lperle@clasp.org.